

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE**

**Debra Franchi, Individually and
as Parent and Guardian of CF
Plaintiff**

v.

**New Hampton School
Defendant**

Civ. No. 1:08-CV-395-JL

**OBJECTION AND MOTION TO STRIKE
AFFIRMATIVE DEFENSES #15 and #16.**

NOW COMES the Plaintiff, Debra Franchi, individually and a/p/n/g to CF, by and through her attorneys, Wiggin & Nourie, P.A., and objects to two of Defendant's affirmative defenses and asks the Court to strike these defenses. In support thereof, Plaintiff states as follows:

1. Plaintiffs filed this suit in September 2008. As such, this suit has been pending for nearly two years. Defendant seeks to assert additional affirmative defenses at this late juncture. Plaintiff, in the spirit of cooperation, assented to 14 of Defendant's 16 affirmative defenses despite the fact that they were untimely.

2. Plaintiffs' counsel asked Defendant to offer a good faith basis for asserting affirmative defense #15 and affirmative defense #16. Affirmative defense #15 asserts that Plaintiff failed to exhaust all administrative remedies. Affirmative defense #16 asserts that Plaintiff's claim is untimely under relevant state or federal statutes.

3. These two affirmative defenses are new. At no time during the nearly two years that this case has been pending has Defendant asserted that Plaintiff failed to

exhaust administrative remedies nor has Defendant asserted that Plaintiff's claim is untimely under state or federal statutes.

4. Plaintiff objects to these defenses because they are untimely and because Defendant failed to provide a good faith basis for asserting the defenses.

5. Pursuant to Local Rule 7.1(c), the Defendant's attorney does not consent.

6. Pursuant to Local Rule 7.1(a)(2), no separate Memorandum of Law is necessary because the relief requested in this motion is within the discretion of this Honorable Court.

7. Pursuant to Local Rule 7.2(a), the granting of this motion will not result in the continuance of any hearing, conference, or trial.

WHEREFORE Plaintiffs pray that this Honorable Court:

- A. Strike Affirmative Defense #15;
- B. Strike Affirmative Defense #16; and
- C. Grant such other relief as is just and equitable.

Respectfully Submitted,
Debra Franchi, Individually and a/p/n/g to CF
By and through her attorneys,
WIGGIN & NOURIE, P.A.

May 28, 2010

/s/ Donna-Marie Cote

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CERTIFICATE OF SERVICE

I certify that I forwarded a copy of the foregoing to Attorney Edward J. Sackman and Attorney Andrea K. Johnstone via the District Court's ECF filing system.

/s/ Donna-Marie Cote

Donna-Marie Cote

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